IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 350 of 2005 (M/B)

Date of decision: 29th March, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 29.3.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 350 of 2005 (M/B)

Saranjeet Singh,
Proprietor M/s Shakumbri Indane Gas Service,
Indane Distributor, Diwan Market,
Arya Nagar Chowk,
Jwalapur, Haridwar. …….. Petitioner

Versus

1. General Manager,
   U.P.S.O. Indian Oil Corporation Ltd.,
   U.P. State Office, Indian Oil Bhawan,
   Kapoorathala Complex, Ali Ganj,
   Lucknow.
2. Indian Oil Corporation Ltd.,
   U.P. State Office, Indian Oil Bhawan,
   Kapoorthala complex, Ali Ganj,
   Lucknow through its Assistant Manager,
   Law and Constituted Attorney Sri S.N. Yadav.
3. Senior Area Manager,
   LPG Indian Oil Corporation Ltd.,
   Marketing Division, Bareilly.
4. Smt. Brij Rani,
   Ex-Chairperson, Haridwar Zila Panchayat,
   W/o Sri Kishan Chand,
   R/o C-2 Sharda Nagar,
   Jwalapur, Haridwar. …….. Respondents

Mr. Alok Singh, Senior Advocate with Mr. D. Barthwal, Advocate for the petitioner.
Mr. V.K. Kohli, Senior Advocate with Mr. I.P. Kohli, Advocate for respondents Nos. 1 to 3.
Mr. Manoj Tewari, Advocate for respondent No. 4.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Alok Singh, Senior Advocate with Mr. D. Barthwal, Advocate for the petitioner.

Mr. V.K. Kohli, Senior Advocate with Mr. I.P. Kohli, Advocate for respondents Nos. 1 to 3.

Mr. Manoj Tewari, Advocate for respondent No. 4.

They are heard.

2. The petitioner has filed this writ petition for the following reliefs:

> "i. a writ, order or direction in the nature of certiorari quashing the impugned order dated 14/15.3.2005 passed by respondent no. 1 by which petitioners dealership / distributorship of Indane Gas Services i.e. liquefied petroleum gas domestic and commercial has been terminated.
>
> ii. a writ, order or direction in the nature of mandamus commanding the respondents not to cause any interference in petitioners' dealership / distributorship of Indane Gas services i.e. liquefied petroleum gas domestic and commercial.
>
> iii. any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> iv. Award the cost of petition to the petitioner."

3. The petitioner is challenging the termination of his distributorship vide order dated 14.03.2005 (Annexure 10). The petitioner's challenge is founded on the grounds:

(i) that Som Dutt, who delivered the cylinders, which on verification were found underweight, to respondent No. 4 Smt. Brij Rani, was not in the petitioner's service on 26.06.2004, the date of delivery of the cylinders;

(ii) that the cylinders delivered by Som Dutt to respondent No. 4 Smt. Brij Rani were not issued from the petitioner's agency; and

(iii) that the two earlier incidents of default on the part of the petitioner were the result of conspiracy by respondent No. 4 Smt. Brij Rani.

4. In the counter affidavit filed on behalf of respondent No. 3 Senior Area Manager, LPG, Indian Oil Corporation Ltd., Marketing Division, Bareilly, the above factual averments made by the petitioner in the writ petition have been seriously disputed. According to the counter affidavit, those cylinders were issued from the petitioner's agency and Som Dutt was very much in the petitioner's service on the

date of the delivery as was admitted by Som Dutt himself in his statement recorded by the Deputy Manager of Indian Oil Corporation.

5. Respondent No. 4 Smt. Brij Rani has also filed a counter affidavit disputing the factual averments made in the writ petition. In her counter affidavit, she has categorically stated that the cylinders were delivered by Som Dutt, who was the deliveryman of the petitioner's agency.

6. From the pleadings of the parties, it is apparent that the matter involves above-mentioned serious disputed questions of fact which cannot be gone into in a writ petition under Article 226 of the Constitution of India in view of the recent dictum of the Apex Court in the case of **Duncan Industries Ltd. and another Vs. Union of India** reported in **(2006) 3 SCC 129**.

7. In our anxiety to ensure that the petitioner is not rendered remediless, we enquired from the learned counsel for the parties as to whether the argument between the parties contains an arbitration clause. The learned counsel for the parties submitted that the agreement between the parties does contain an arbitration clause.

8. As the matter involves disputed questions of fact, the writ petition fails and is, hereby, dismissed.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
29.03.2006 **29.03.2006**

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